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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,380	05/11/2001	Dermot Tynan	19685-045	6443

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EXAMINER

BATES, KEVIN T

ART UNIT PAPER NUMBER

2155

DATE MAILED: 08/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/853,380

Applicant(s)

TYNAN ET AL.

Examiner

Kevin Bates

Art Unit

2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

This Office Action is in response to a communication made on May 11, 2001.

The Change of Address was received on November 13, 2002.

Claims 1 – 17 are pending in this application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-9 and 16-17 are rejected under 35 U.S.C. 102(e) as being anticipated by McGuire (6493871).

Regarding claims 1, 16, and 17, McGuire discloses a method for transferring one or more files from a host peer to a target peer in which respective message digests are calculated for a file on a host peer and a target peer (Column 9, lines 33 – 35), and a comparison between the calculated digests is made in order to establish whether the target peer possesses the file in question (Column 9, lines 35 – 37).

Regarding claim 2, McGuire discloses that a comparison is made prior to transmission of a file from the host peer to the target peer (Column 7, lines 26 – 32; lines 37 – 41).

Regarding claim 3, McGuire discloses that the comparison is made in the event that the target peer already possesses a file of the same name as that to be transferred (Column 7, lines 37 – 38).

Regarding claim 4, McGuire discloses that if the result of the comparison is that the calculated message digests are identical, the file is not transmitted by the host peer (Column 9, lines 35 – 37).

Regarding claim 5, McGuire discloses that a comparison of message digests is made after a file has been sent to the target peer (Column 8, lines 39 – 43).

Regarding claim 6, McGuire discloses that if the result of the comparison is that the message digests differ, a file or part of a file is re-transmitted from the host peer to the target peer (Column 9, lines 4 – 11).

Regarding claim 7, McGuire discloses that the message digest is calculated by means of a hashing algorithm (Column 9, lines 9 – 16).

Regarding claim 8, McGuire discloses that the message digest is calculated by an algorithm that has an input space that is approximately evenly distributed over the digest space (Column 9, lines 9 – 16).

Regarding claim 9, McGuire discloses that the hashing algorithm is in accordance with specification MD5 as described in IETF RFC 1321 (Column 9, lines 9 – 16).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10–15 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGuire in view of Berl (5940390).

Regarding claim 10, McGuire does not explicitly indicate a plurality of communication channels are established between a host peer and each target peer. Berl teaches a peer to peer communication for sending files that includes multiple data streams (Figure 7, elements 732, 734, 736, and 738; Column 10, lines 29 – 36; Column 3, lines 56 – 60). It would have been obvious to one of ordinary skill in the art at time the invention was made to use Berl's teaching in McGuire's system in order to allow for certain packets to have priority by having many sessions of different priority and sending the higher priority packets along the session with more priority (Column 6, lines 30 – 44).

Regarding claim 11, the combination of McGuire and Berl discloses that each channel includes a TCP/IP connection between the peers (Berl, Column 6, lines 50 – 52).

Regarding claim 12, the combination of McGuire and Berl discloses that the one or more files are transmitted as discrete packets, the packets being sent on an available channel (McGuire, Column 13, lines 41 – 45).

Regarding claim 13, the combination of McGuire and Berl discloses that the packets are removed from the tail of a packet queue (McGuire, Column 13, lines 41 – 51).

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Regarding claim 14, the combination of McGuire and Berl discloses that packets are removed from the tails of a plurality of packet queues in turn (McGuire, Column 13, lines 41 – 51).

Regarding claim 15, the combination of McGuire and Berl discloses that the frequency at which packets are removed from the queues in a predetermined sequence such that the frequency at which packets are removed varies from one queue to another (Berl, Column 4, lines 45 – 60; Column 5, lines 26 – 36).

Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U. S. Patent No. 5765173 issued to Cane, because it discloses checking the message digest to see if a file has been modified before backing it up or parts of it up.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Bates whose telephone number is (703) 605-0633. The examiner can normally be reached on 8 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain Alam can be reached on (703) 308-6662. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KB

KB
August 20, 2004


HOSAIN ALAM
SUPERVISORY PATENT EXAMINER